

BUSINESS REPORT

**MONTANA SENATE
61st LEGISLATURE - REGULAR SESSION**

SENATE STATE ADMINISTRATION COMMITTEE

Date: Monday, February 16, 2009
Place: Capitol

Time: 3:00 pm
Room: 335

BILLS and RESOLUTIONS HEARD:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Add Postponed (PP) when appropriate:

SB 20, SB 348, SB 367, SR 2

EXECUTIVE ACTION TAKEN:

Prefix (HB, HR, HJR, SB, SR, or SJR) and number. Enter P(pass) F(failed) DPAA (do pass as amended) BC(be concurred in) BCAA (be concurred in as amended):

~~SR 2 do pass~~ ^{adopt} (preliminary) BE ADOPTED

SB 20 do pass as amended (DPAA)

SB 348 do pass (DP)

SB 358 tabled

COMMENTS:

SEN. Jim Shockley, Chairman

MONTANA STATE SENATE
Roll Call
STATE ADMINISTRATION COMMITTEE

DATE: 2/16/09

| <u>NAME</u> | <u>PRESENT</u> | <u>ABSENT/ EXCUSED</u> |
|-------------------------------------|----------------|----------------------------|
| SENATOR JIM SHOCKLEY, CHAIRMAN | ✓ | |
| SENATOR JOHN BRUEGGEMAN, VICE CHAIR | ✓ | |
| SENATOR KEITH BALES | ✓ | |
| SENATOR JOE BALLYEAT | ✓ | |
| SENATOR JERRY BLACK | ✓ | |
| SENATOR JOHN BRENDEN | ✓ | |
| SENATOR MIKE COONEY | ✓ | |
| SENATOR LARRY JENT | ✓ | |
| SENATOR CAROLYN SQUIRES | ✓ | |
| SENATOR JOSEPH TROPILA | ✓ | |
| SENATOR JONATHAN WINDY BOY | ✓ | |
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**PRELIMINARY
SENATE STANDING COMMITTEE REPORT**

February 17, 2009

Page 1 of 1

Mr. President:

We, your committee on **State Administration** recommend that **Senate Resolution 2** (first reading copy -- white) **be adopted.**

Signed: _____

Senator Jim Shockley, Chair

- END -

Committee Vote:

Yes 9, No 0

Fiscal Note Required ☐

SR0002001SC.sdr



SENATE STANDING COMMITTEE REPORT

February 19, 2009

Page 1 of 4

Mr. President:

We, your committee on **State Administration** recommend that **Senate Bill 20** (second reading copy -- yellow) **do pass as amended.**

Signed: _____

Senator Jim Shockley, Chair

And, that such amendments read:

1. Title, line 5.

Following: the second "AN ACT"

Insert: "CLARIFYING THE MEANING OF THE TERM "SUBSTANTIAL COMPLIANCE";"

2. Title, line 6.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS"

Following: "2-4-101"

Insert: "AND 2-4-305"

3. Page 1, line 16 through line 17.

Following: "(MAPA)" on line 16

Strike: remainder of line 16 through "MSA" on line 17

4. Page 1, line 25 through page 2, line 12.

Strike: Page 1, line 25 through page 2, line 12 in their entirety

Insert: "WHEREAS, under the rationale employed by the Montana Supreme Court in the MSA opinion, every rule adopted by an agency could be found to be in substantial compliance with MAPA since every notice of proposed rulemaking gives some notice of a proposed rule adoption, amendment, or repeal; and

WHEREAS, the Legislature intends that a determination of

Committee Vote:

Yes 9, No 0

Fiscal Note Required ____

SB0020002SC.sdr

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whether MAPA's substantial compliance requirement in section 2-4-305(7), MCA, has been satisfied requires an analysis of more than whether an agency provided adequate public notice of its proposed rule, but rather requires an analysis of whether the agency complied with 2-4-302, 2-4-303, 2-4-305, or 2-4-306, MCA; and

WHEREAS, enactment of this legislation is not intended by the Legislature as a comment upon the outcome of the MSA opinion, but rather is intended to change the analysis used by the courts when determining whether MAPA's substantial compliance requirement, found in section 2-4-305(7), MCA, has been satisfied in future cases."

5. Page 2, line 19.

Strike: "One purpose"

Insert: "The purposes"

Strike: "is"

Insert: "are"

Following: the first "to"

Insert: ": (a) "

6. Page 2, line 20.

Following: "that action"

Insert: ";

(b) establish general uniformity and due process safeguards in agency rulemaking, legislative review of rules, and contested case proceedings;

(c) establish standards for judicial review of agency rules and final agency decisions; and

(d) provide the executive and judicial branches of government with statutory directives"

7. Page 2, line 23.

Strike: subsection (3) in its entirety

Insert: "**Section 2.** Section 2-4-305, MCA, is amended to read:

"2-4-305. Requisites for validity -- authority and statement of reasons. (1) The agency shall fully consider written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language.

Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or

2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. The measure of whether an agency has adopted a rule in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of the proposed rule, standing alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules. An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records."

Renumber: subsequent section

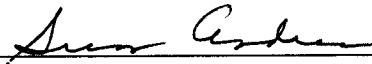
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COMMITTEE FILE COPY

TABLED BILL

The **SENATE STATE ADMINISTRATION COMMITTEE** TABLED **SB 358**, by motion, on **Monday, February 16, 2009**.

(For the Committee)


(Secretary of the Senate)

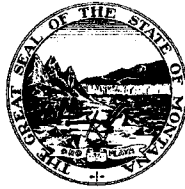
9:00
(Time)

2/17
(Date)

February 16, 2009

Libby Goodwin, Secretary

Phone: 444-4783



SENATE STANDING COMMITTEE REPORT

February 17, 2009

Page 1 of 1

Mr. President:

We, your committee on **State Administration** recommend that **Senate Bill 348** (first reading copy -- white) **do pass**.

Signed: _____

Senator Jim Shockley, Chair

- END -

Committee Vote:

Yes 6, No 5

Fiscal Note Required ☐

SB0348001SC.sdr

SR

MONTANA STATE SENATE
Roll Call Vote
STATE ADMINISTRATION COMMITTEE

DATE 2/16/09 BILL NO SB 348 MOTION NO. _____
 MOTION: Do Pass

| <u>NAME</u> | AYE | NO | If Proxy Vote, check here & include signed Proxy Form with minutes |
|-------------------------------------|-----|----|--|
| SENATOR KEITH BALES | ✓ | | ✓ |
| SENATOR JOE BALLYEAT | ✓ | | |
| SENATOR JERRY BLACK | ✓ | | |
| SENATOR JOHN BRENDEN | ✓ | | |
| SENATOR MIKE COONEY | | ✓ | |
| SENATOR LARRY JENT | | ✓ | |
| SENATOR CAROLYN SQUIRES | | ✓ | |
| SENATOR JOSEPH TROPILA | | ✓ | |
| SENATOR JONATHAN WINDY BOY | | ✓ | |
| SENATOR JOHN BRUEGGEMAN, VICE CHAIR | ✓ | | |
| SENATOR JIM SHOCKLEY, CHAIRMAN | ✓ | | |
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MONTANA STATE SENATE
Roll Call Vote
STATE ADMINISTRATION COMMITTEE

DATE 2/16/09 BILL NO SB308 MOTION NO. _____
MOTION: DO PASS AS AMENDED

| <u>NAME</u> | <u>AYE</u> | <u>NO</u> | If Proxy Vote, check here & include signed Proxy Form with minutes |
|-------------------------------------|------------|-----------|--|
| SENATOR KEITH BALES | | ✓ | ✓ |
| SENATOR JOE BALLYEAT | | ✓ | |
| SENATOR JERRY BLACK | | ✓ | |
| SENATOR JOHN BRENDEN | | ✓ | |
| SENATOR MIKE COONEY | ✓ | | |
| SENATOR LARRY JENT | | ✓ | |
| SENATOR CAROLYN SQUIRES | ✓ | | |
| SENATOR JOSEPH TROPILA | ✓ | | |
| SENATOR JONATHAN WINDY BOY | ✓ | | |
| SENATOR JOHN BRUEGGEMAN, VICE CHAIR | | ✓ | |
| SENATOR JIM SHOCKLEY, CHAIRMAN | | ✓ | |
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AUTHORIZED SENATE COMMITTEE PROXY

I request to be excused from State Administration Committee because of other commitments. I desire to leave my proxy vote with:

Sen. John C. Breen

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT

AYE NO

| | | |
|-----------|---|---|
| 358 | | X |
| 348 | X | |
| SB 20 | X | |
| Amend 358 | X | |
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BILL/AMENDMENT

AYE NO

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Sen. Kath Bah
(Signature)

Date 2/16/2009

MONTANA STATE SENATE
Visitors Register

State Administration Committee

Date 2-16-09

Bill No. SB 367 Sponsor(s) Hamlett

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| Name and Address | Representing | Support | Oppose | Inf. |
|------------------|-----------------------------|---------|--------------|------|
| Ryan Zinke | SDZ | X | | |
| LINDA STOLL | MACR | ✓ | w/amendments | |
| ROGER HANSEN | ALT NATIONWIDE ASSOCIATIONS | X | | |
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

State Administration Committee

Dated 2-16-09

Bill No. SB 348 Sponsor(s) Essmann

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| Name and Address | Representing | Support | Oppose | Inf. |
|------------------|--------------|---------|--------|------|
| Jon Bennion | MT Chamber | X | | |
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

State Administration Committee

Date 2-16-09

Bill No. SB 20 Sponsor(s) Jent

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| Name and Address | Representing | Support | Oppose | Inf. |
|--------------------|-------------------|-----------------------|--------|------|
| <i>Ann Bradley</i> | <i>Gov Office</i> | <i>X w/ Amendment</i> | | |
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

MONTANA STATE SENATE
Visitors Register

State Administration Committee

Date 2-16-09

Bill No. SR 2 Sponsor(s) Shockley

PLEASE PRINT

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| Name and Address | Representing | Support | Oppose | Inf. |
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.